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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 320

JERROLD ORLAND CONAWAY AND LOUIS J. RITACCO
Petitioners

vs.

STATE OF MINNESOTA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF MINNESOTA

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court, State of Minnesota, entered in the above entitled case on May 1, 1963 (App. p. 17).[1]

CITATION TO OPINIONS BELOW

There is no opinion of the Minnesota Supreme Court. That Court ordered, on May 1, 1963, that its order to show cause why a writ of prohibition should not issue to the Hennepin County District Court be discharged (App. p. 17).

[1] An Appendix separately presented includes material portions of the certified record. The certified record consists of the following: (1) Petition to Minnesota Supreme Court for Writ of Prohibition; (2) Order to Show Cause why that writ should not issue; (3) Order discharging the Order to Show Cause.

JURISDICTION

The order of the Supreme Court for the State of Minnesota finally disposing of petitioners' petition for a writ of prohibition to the Hennepin County District Court was entered on May 1, 1963. The jurisdiction of this Court is invoked under *28 U.S.C.*, Section 1257 (3).

QUESTIONS PRESENTED

1. Whether an arrest made on a Governor's extradition warrant issued without probable cause violates the Due Process clause, Fourteenth Amendment.

2. Whether an accused is denied Due Process by being required to stand trial after an arrest made in violation of the Due Process clause, Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Texts of the following constitutional and statutory provisions are set forth in the Appendix separately presented:

Amendment XIV, *Constitution of the United States;*
Amendment IV, *Constitution of the United States;*
Article IV, Section 2, Clause 2, *Constitution of the United States;*
18 United States Code, Section 3182;
Purdon's Pennsylvania Statutes Annotated, Section 191.03;
Minnesota Statutes 1961, Section 628.31;
Minnesota Statutes 1961, Section 629.42;
Minnesota Statutes 1961, Section 629.50.

STATEMENT

Petitioners were arrested in Harrisburg, Pennsylvania, on January 3, 1963, under extradition warrants issued by the Governor of Pennsylvania upon the requisition of the Governor of Minnesota in which petitioners were charged with being fugitives from Minnesota charged with grand larceny in the first degree (App. pp. 4 and 11-12).[2]

The instruments in the extradition requisition to the Governor of Pennsylvania which purported to establish that petitioners had committed an offense in Minnesota were:

1. Complaint made by William L. Mahnke, December 10, 1962, in Minneapolis, Minnesota, Municipal Court (App. pp. 12-14).

2. Affidavit as to Facts and Circumstances When No Indictment Has Been Found, made by William L. Mahnke, dated December 14, 1962 (App. pp. 14-15).[3]

The Affidavit as to Facts and Circumstances When No Indictment Has Been Found is made by Mahnke on information and belief and the basis for and sources of the information and belief are not set out (App. pp. 14-15). No sources for the information in the Complaint made four days earlier by Mahnke are set out (App. pp. 12-14).

Petitioners were held in Pennsylvania under the extradition warrants until Friday, January 25, 1963, when petitioners, after a hearing on their petition for a writ of habeas corpus in the Court of Common Pleas, Dauphin County, Pennsylvania, were ordered by the Court to be returned to Minnesota under the extradition warrants (App. p. 5). No

[2] Only Conaway's extradition warrant is set out. Ritacco's is identical.

[3] Only the Affidavit as to Facts and Circumstances When No Indictment Has Been Found as to Ritacco is set out. Except for his name, Conaway's is identical.

stay was provided for in that order and on Saturday, January 26, 1963, petitioners were informed that their return to Minnesota under the warrants would commence on that date (App. p. 5). On Sunday, January 27, 1963, officers of the Minneapolis, Minnesota, police department took petitioners to Minnesota, and on January 29, 1963, petitioners, in custody, arrived in Minnesota and were taken before the Minneapolis Municipal Court for proceedings under the complaint charging them with grand larceny in the first degree (App. p. 5 and pp. 12-13).

In Minneapolis Municipal Court on January 29, 1963, petitioners objected to the jurisdiction of the Municipal Court and moved to dismiss all proceedings under the complaint upon the ground that their arrest under the extradition warrants was a denial of due process because the warrants issued without probable cause, in violation of Amendments IV and XIV, Constitution of the United States. (App. p. 7). Petitioners' objections were overruled, their motions denied, and they were bound over to District Court after a preliminary examination in Municipal Court on the complaint (App. p. 7). Petitioners were enlarged on bail by the Municipal Court (App. p. 7).

Petitioners objected to the jurisdiction of the Hennepin County District Court in their first appearance there on February 25, 1963, and before their arraignment upon an Information charging them with the same offense as set out in the complaint (App. pp. 7-8). Petitioners at that time moved to dismiss the Information and all proceedings in District Court upon the ground that the Court lacked jurisdiction because the jurisdiction of the District Court depended upon the filing of an Information which could only occur after petitioners' presence within Minnesota had been accomplished and that the presence was obtained in

violation of Amendments IV and XIV, *Constitution of the United States*, and *Title 18, United States Code*. Section 3182 (App. pp. 7-8 and pp. 1-2), because the extradition warrants under which petitioners were returned to Minnesota were issued without probable cause. The District Court denied the motions on March 28, 1963, and ordered petitioners to stand trial upon the Information (App. p. 8).

Petitioners then petitioned the Supreme Court of Minnesota for a writ of prohibition. The ground asserted was that the District Court was either without jurisdiction or was exceeding its jurisdiction because its power to act was the result of a denial of petitioners' rights under the due process clause (App. p. 6). The Minnesota Supreme Court refused to issue the writ of prohibition (App. p. 17).

REASONS FOR GRANTING THE WRIT

1. An order denying an application for a writ of prohibition by the highest court of a state is a final judgment within *18 U.S.C.*, Section 1257, *Michigan Central v. Mix*, 278 U. S. 492.

2. There should be a determination that there is a sanction for an arrest which violates due process.

The Fourteenth Amendment requires that probable cause be established for a search. The sanction for its enforcement is the exclusion of evidence obtained in the unlawful search. *Mapp v. Ohio*, 367 U. S. 643. If the Fourteenth Amendment affords a sanction for an unlawful search, it must afford a sanction for an unlawful arrest.

That sanction should be a denial of the power of the Court to proceed in a cause which was commenced by an unlawful arrest. But for the unlawful arrest, the Hennepin County District Court could not have acquired power to proceed against petitioners.

Petitioners are being proceeded against in Hennepin County District Court as a result of their return to Minnesota under the extradition warrants.

If petitioners had not been returned under those warrants, the Minnesota District Court could not have acquired jurisdiction, because no Information could have been filed until petitioners had been accorded a preliminary examination in municipal court, for which their presence was required. *Minnesota Statutes 1961*, Sections 628.31, 629.42, 629.50 (App. pp. 3-5).

Petitioners' arrests under the extradition warrants were unlawful because no probable cause had been established for their issuance. Mahnke's Complaint and Affidavit as to Facts and Circumstances When No Indictment Has Been Found (App. pp. 12-15) do not establish probable cause because they were made on information and belief. No sources nor basis for information and belief were set forth. Accordingly, the requirements of the Fourth Amendment for a lawful arrest were not met. *Giordenello v. U. S.*, 357 U. S. 480.

This Court's decision in *Frisbie v. Collins*, 342 U. S. 519, should not be controlling here. Since that case was decided, this Court has determined that there is a sanction for enforcement in the States of the requirements of the Fourth Amendment, *Mapp v. Ohio, supra*, and has announced Fourth Amendment standards for a lawful arrest in *Giordenello v. U. S., supra*. If *Frisbie v. Collins, supra*, were to be followed now, its effect would give rise to the following anomaly: There is a remedy—exclusion of evidence—for an invasion of privacy resulting from an unlawful search; there is no remedy for a deprivation of liberty resulting from an unlawful arrest. Petitioners submit

that an arrest without probable cause is a greater invasion of privacy and liberty than a search without probable cause. There should be a remedy for the invasion.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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